



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

August 20, 2013

David C. Jenkins
djenkins@k-plaw.com

Mr. Phil Shannon
Muckrock News
Dept. MR 6459
P.O. Box 55819
Boston, MA 02205-5819

Re: Document Request August 8, 2013

Dear Mr. Shannon:

On August 8, 2013, you filed a public document request with the Town of Carver ("the Town") seeking production of "all documents related to the Department Heads union petition issue." The Town has requested that I respond to your request on its behalf. The Town has custody of documents relating to this issue. In this regard, the Town produces a petition filed by the American Federation of State, County and Municipal Employees, Council 93, that may be responsive to your request.

Other documents may be withheld from disclosure pursuant to the application of several exemptions to the Public Record Law, as discussed in further detail below. See, G.L. c. 4, §7(26).

Initially, the Town asserts that because the petition referred to above remains unresolved, and the Town remains in litigation with regard to the composition of the bargaining unit, any communications between the Town and its counsel may be withheld pursuant to the attorney-client privilege. Suffolk Construction Co. v. Div. of Capital Asset Mgmt., 449 Mass. 444, 449-50 (2007) (concluding that enactment of the Public Records Law did not destroy the protection provided by the attorney-client privilege to communications between governmental entities and their lawyers).

Additionally, certain portions of the records constitute materials relative to the development of policy, including ongoing litigation and other matters that are discussed exclusively in executive session. Exemption (d) of the Public Records Law is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed and applies to:

Inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this sub clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.

The application of the exemption is limited to recommendations on legal and policy matters found within an ongoing deliberative process. Babets v. Secretary of the Executive Office of Human Services, 403 Mass. 230, 237 n.8 (1988). To the extent that certain of the requested records relate to

Mr. Phil Shannon

August 20, 2013

Page 2

the development of, or are recommendations regarding, policy positions regarding various matters upon which the Town has yet to take action, including various matters already in litigation or the subject of grievances, premature disclosure thereof may jeopardize the Town's ability to analyze the issues and reach an appropriate decision as to how to proceed with regard to the same. As such, certain portions of the responsive records are exempt pursuant to exemption (d) of the Public Records Law.

You may appeal this determination to the Office of the Secretary of State.

Very truly yours,


David C. Jenkins

DCJ/lem

cc: Board of Selectmen

480199/CARV/0172